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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 683

GLADYS W. SIMPSON, *Petitioner,*

v.

THE UNITED STATES OF AMERICA, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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February, 1959

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Gladys W. Simpson prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Seventh Circuit entered in the above entitled cause.

OPINION BELOW

The opinion of the Court of Appeals for the Seventh Circuit has not yet been reported, and is printed in the Appendix to this petition at page 1a, *post.* There is no written opinion of the District Court; the Findings of Fact, Conclusions of Law and Judgment of

the District Court are printed in Appellant's Supplemental Appendix filed below, pages 6-12, filed with this petition.

JURISDICTION

The judgment of the Court of Appeals for the Seventh Circuit was made and entered on November 7, 1958, and is printed in the Appendix to this petition at page 11a, *post*. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether a sum of money received by petitioner in 1951 was "compensation for personal service", includible in her gross income for purposes of the federal income tax imposed that year, or was a "gift" exempt from said tax.

STATUTE INVOLVED

Section 22 of the Internal Revenue Code of 1939 (53, Part 1, Stat.), applicable to petitioner's taxable year 1951, provides in part, as follows:

> Sec. 22. GROSS INCOME.
>
> "(a) *General Definition.*—'Gross income' includes * * * compensation for personal service * * * of whatever kind and in whatever form paid * * *
>
> "(b) *Exclusions from Gross Income.* The following items shall not be included in gross income and shall be exempt from taxation under this chapter:
>
> * * * * * *"
>
> "(3) *Gifts* * * * the value of property acquired by gift. * * *"

The verbatim text is set forth at page 12a, *post*.

STATEMENT

Petitioner's husband had been employed by a corporation for 52 years, until he died on January 16, 1951. The salary earned by the husband prior to his death had been fully paid to him and to his estate and at the time of his death there was no legal obligation of the corporation to pay him, his estate or his widow any additional compensation for or on account of his services during his lifetime. Petitioner received a payment of $33,750 from the corporation on February 5, 1951. Said sum was the equivalent of nine months salary of the husband at the rate in effect at the time of his death. Petitioner has never been an employee, officer, director, agent or stockholder of and has never rendered services of any kind to the corporation. She has never given consideration of any kind, cognizable in the contract *law* of "consideration," for the payment received by her. Petitioner included said sum in gross income reported in her federal income tax return for 1951. She timely filed a claim for refund of tax on the ground that said sum was a gift to her, but the claim was disallowed by the Internal Revenue Service. She sued for the refund in the United States District Court, Southern District of Illinois, which found that jurisdiction of the action exists by virtue of Section 1340 and Section 1346 of Title 28 of the United States Code.

The District Court ordered that Judgment be entered in favor of petitioner, based on the Court's findings of fact and conclusions of law that the payment received by taxpayer constituted a gift to her, and was therefore excludible from her gross income for 1951. On the government's appeal, the Court of Appeals reversed the Judgment of the District Court on the

grounds that the payment was not intended as a gift to the widow and Section 22(a) is broad enough in its definition of "gross income" to include the payment in question. One of the judges of the Court of Appeals disagreed with the other two judges and said he would affirm the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

1. The decision of the Court below is portentous of a gross injustice to petitioner in the instant case. It stands alone in conflict with the unanimity of 38 or more court decisions, most of them rendered during the past 3 years in favor of widows in analogous cases. In particular, it is directly in conflict with the PER CURIAM decision of the United States Court of Appeals for the Sixth Circuit in the case of *United States* v. *Bankston* (dated May 5, 1958), 254 F. 2d 641 (in which case the government did not petition this Court for certiorari), and it is directly in conflict with the decision of the United States Court of Appeals for the Fourth Circuit in the case of *Bounds* v. *United States* (dated December 15, 1958), F. 2d . In both of these cases the Courts held that the payments constituted non-taxable gifts to the widows. So far as concerns a widow recipient such as petitioner, these two Court of Appeals cases and the instant case are alike in the facts material to consideration of the question presented, notwithstanding the distinction which the Fourth Circuit Court in the *Bounds* case attempted to draw in view of the decision of the Seventh Circuit Court in the instant case.

In 18 or more cases, the District Courts have decided the question in favor of the widows. See for examples *Rodner* v. *United States*, 149 F. Supp. 233, and *Allinger*

et al. v. United States (D.C.E.D. Mich. Nov. 17, 1958), F. Supp. . The Courts in these 18 cases are located in 6 of the 10 circuits: Second (1 case), Fifth (4 cases), Sixth (6 cases), Seventh (3 cases), Eighth (1 case) and Ninth (3 cases).

In 15 or more cases, the Tax Court has decided the question in favor of the widows. See for examples *Louise K. Aprill*, 13 T.C. 707, *Est. of Albert W. Morse*, 17 TCM 261 and *Estate of Arthur W. Hellstrom*, 24 T.C. 916.

It is important that this conflict be resolved in order not only that injustice to petitioner be prevented but that the lower courts and the Treasury Department may be certain whether the rule applied in the aforesaid 33 cases applied to all years under IRC 1939, as amended. If such were the law at the time of enactment of IRC 1954, *then it is clear from the text and legislative history of IRC 1954 that Section 101(b) did not change the existing law applicable to gratuitous payments by employers to the widows of deceased employees.* The language of the new exemption provided in Section 22(b)(1)(B), which was added to IRC 1939 by Section 302 of the Revenue Act of 1951, and which was broadened by Section 101(b), IRC 1954, and the legislative history thereof, clearly establish that in both enactments Congress was conferring a limited exemption upon payments *which theretofore had not been exempt from taxation.*

At least one District Court has expressed the opinion that while gratuitous payments to widows were exempt from taxation in *all* years subject to IRC 1939, as amended, *Section 101(b), IRC 1954, changed this. Rodner v. United States*, 149 F. Supp. 233, 237. Thus,

obiter dictum (the case involved the taxable year 1952), the Court reasoned as follows:

> "* * * Section 101(b) * * *: eliminates the provisions limiting to contractual death benefits the application of the $5,000 exemption. To me the effect of this would seem to be to withdraw the complete exemption that gratuitous death benefits had enjoyed and to substitute an exemption up to $5,000. In the complete revision effected by the 1954 Code the general language exempting gifts is controlled by the particular language of Section 101(b) limiting the exemption of death benefits to $5,000. Gifts in general are exempt but gifts in the form of death benefits are taxable insofar as they exceed $5,000." (Id. 237)

If this interpretation is sound, it should today produce acute anxiety to many legions of married women and it may lead to bitter results to many, many widows, and their families. For, by the same process of interpretation, payments received by widows upon the deaths of husbands who at the time of death were covered by their employers' group life insurance contracts providing for such payments on the death of the employees to their beneficiaries, such payments being generally exempt under Section 101(a)(1), would be subject to the more specific language of Section 101(b). Cf. *Ginsberg & Sons v. Popkin*, 1922, 285 U.S. 204, 208, wherein this Court said:

> "* * * General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment. *United States* v. *Chase*, 135 U.S. 255, 260. Specific terms prevail over the general in the same or another statute which otherwise might be controlling.

Kepner v. *United States*, 195 U.S. 100, 125; In re *Hassenbusch*, 108 F. 35, 38; *United States* v. *Peters*, 166 F. Ed. 613, 615. * * *"

To illustrate, the Federal Employees' Group Life Insurance Act (5 U.S.C. § 2091) provides for insurance of appointive or elective officers or employees (all of them called "employees" for that purpose) in or under the Executive, Judicial or Legislative Branch of the United States Government, for an amount of group life insurance approximating each employee's annual compensation not exceeding $20,000. Clearly, if the receipt by a civilian widow of a gratuitous payment to her by her deceased husband's employer is covered by Section 101(b), so is a receipt by the beneficiary of a deceased government employee under a Federal Group Life Insurance policy plainly covered. This Court has said, however, that it will not follow the plain meaning of the words of a statutory provision if to do so produces an unreasonable result, plainly at variance with the policy of the legislation as a whole. *U. S.* v. *American Trucking Associations*, 310 U. S. 534, 542-543; *Harrison* v. *Northern Trust Co.*, 317 U. S. 476, 479.

Without a decision of this Court that payments such as the one in question were gifts exempt from the tax imposed by IRC 1939, as amended, the wives as well as widows of employees covered by group life insurance plans,—the Courts and the Treasury Department,—will be greatly uncertain whether payments under such plans are free of the $5,000 limitation imposed by Section 101(b), IRC 1954, just as much as widows of employees who receive gratuitous payments in taxable years subject to IRC 1954 may well be uncertain. To illustrate, in Technical Information Release No.

87, published August 25, 1958, the Revenue Service announced a "new litigation policy" due to a "number of adverse court decisions". The announcement implied that the Service will continue to litigate cases (under IRC 1939) of payments by employers to widows of employees pursuant to a "plan" of the employee in effect before the husband's death. More significant, however, *and notwithstanding IRC 1954 has been in effect over 4 years,* the Release concludes with the sentence reading as follows:

> "The position of the Service with respect to cases in this area arising under the Internal Revenue Code of 1954 *involves other questions* and will be made the subject of a future announcement." (Italics supplied)

If this Court denies certiorari in the instant case, widow recipients and many others will have cause to be worried how far the Revenue Service will go in formulating its "position" in IRC 1954 cases, in view of such fact of denial of certiorari together with the fact of the *dictum* of the court in *Rodner* case, *supra.*

Another unreasonable result of any such literal interpretation of Section 101(b) as suggested in the *Rodner* case, *supra,* is that it would approve of changes in tax exemptions which have been in the law for upwards of half a century, without any evidence that Congress intended such changes and without any evidence that taxpayers were forewarned and had an opportunity to be heard on such drastic changes in the long established law. Compare the open and above-board action of Congress in Section 105 of IRC 1954, wherein the long established exemption for amounts received by employees under their employers' accident

and health plans was sharply limited not to exceed $100 per week. In the case of this exemption, the legislative history as well as the language of the statute leaves no room for question that Congress intended and provided for such limitation on the amount of the receipt exempt from tax. In this connection, we point out that though the law had thus been settled by Congress in IRC 1954, this Court on October 8, 1956, granted certiorari and on April 1, 1957 reversed the judgment of the lower court in the case of *Haynes* v. *United States*, 352 U.S. 820, 353 U. S. 81 (involving the taxable year 1949), which lower court decision had erroneously upheld the government's restrictive interpretation of Section 22(b)(5) of the 1939 IRC.

2. The aforementioned unanimity of 33 or more decisions of the Courts in favor of widows in like cases during the period 1949 to 1958 had, until the decision of the Seventh Circuit Court in the instant case, gone far in restoring integrity to the federal income tax law and its administration with respect to payments to widows such as the one in question. It is important that that integrity be *fully* restored by a decision of this Court in the instant case.

Integrity obtained unquestionably, from 1914 to 1950. In the latter year, however, the Revenue Service took the "position" that payments like the one in question in the instant case, are taxable income. Many widows went to Court about it, and the Government has suffered defeat in *all* cases to date, except the instant case. In the *Bounds* case, *supra*, the Court of Appeals, observing that the so-lately-assumed position of the Government has been "severely battered in litigation", expressed a not-so-soft impeachment of the Government for pressing its position any further in litigation

of such cases. Moreover, there are *no* signs whatever that Congress or its Committees have in any way approved of this position of the Government. On the contrary, there are indications that they have been aware of the position and have *not* approved it. Thus, significant events occurring during the period 1949 to 1958, are set forth in chronological order as follows.

The question as to taxability of gratuitous payments to widows as in the instant case, first arose in view of the language of the Income Tax provisions of the Act of October 3, 1913, the relevant portions of which are quoted as follows:

"Section II

* * * * *

"B. * * * the net income * * * shall include * * * compensation for personal service of whatever kind and in whatever form paid, * * * but not the value of property acquired by gift, * * *" (38 Stat. 114, 166-167)

A Treasury Decision approved by the Secretary of the Treasury, W. G. McAdoo, on December 14, 1914, decided the question in a rule, the relevant portion of which is quoted as follows:

"*Gratuity.*—Where the monthly salary of an officer or employee is paid for a limited period after his death to his widow in recognition of the services rendered by her husband, no services being rendered by the widow, it is held that such payment is a gratuity and exempt from taxation under the income tax law. * * *" T.D. 2090, Part I, Treasury Decisions, Internal Revenue, Volume 16, Jan.-Dec. 1914, page 267.

During the latter half of 1921, the Bureau of Internal Revenue ruled very briefly, the ruling is quoted in its entirety as follows:

> "A corporation paid to the widow of a deceased officer a certain amount equal to the salary he would have earned in two months. The payment was without consideration, a gratuity voted as a compliment to the deceased. It is held that the payment does not constitute taxable income." (O.D. 1017, C.B. No. 5, 101)

In the latter part of 1939, the Bureau issued a ruling concerning certain "non-compulsory" payments by an employer to the widow of a deceased employee, the pertinent portions of which are quoted as follows:

> "* * * A, a minority stockholder and salaried officer of the M Company, died on January — 1937. During 1937 the M Company paid to B, his widow, X dollars a week, a total of 52 X dollars for the year, which was the amount of salary A would have drawn had he lived. During 1938 the payments to B were X dollars a month, or 12 X dollars for the year. * * *
>
> "The amounts constitute gifts to B and are, therefore, not taxable income to her. * * *" (I.T. 3329, C.B. 1939-2, 153)

On November 8, 1949, in the first decision of a court in a case like the instant case, the Tax Court of the United States held the payments to the widow therein involved, to be gifts exempt from tax. *Louise K. Aprill*, 13 T.C. 707.

The above-quoted language of the 1913 Act (page 10, *ante*) was continued without relevant change in the succeeding Revenue Acts, to and including IRC 1939, quoted at page 2, *ante*; and the rule of T.D. 2090 con-

tinued without change. This Court said in *Helvering v. Winmill*, 305 U.S. 79, 83, that—

> "Treasury regulations and interpretations long continued without substantial change, applying to unamended or substantially reenacted statutes, are deemed to have received congressional approval and *have the effect of law*." (Italics supplied)

On September 12, 1950, the Commissioner of Internal Revenue, with the approval of the Acting Secretary of the Treasury, issued I.T. 4027 (C.B. 1950-2, 9), applicable to payments received by widows after January 1, 1951, the relevant portions of which are quoted as follows:

> "It is the position of the Bureau that irrespective of a 'plan', voluntary or involuntary, definite or indefinite, payments of the type herein considered constitute taxable income, and it is held that payments made by an employer to the widow of a deceased officer or employee, in consideration of services rendered by the officer or employee, are includible in the gross income of the widow for Federal income tax purposes. Accordingly, O.D. 1017, *supra*, is revoked. I.T. 3329, *supra*, is modified and the paragraph entitled '*Gratuity*' in Part I of Treasury Decision 2090, approved on December 14, 1914 will no longer be followed."

The Senate Finance Committee Report dated September 18, 1951, to accompany H.R. 4473, the Bill to enact the Revenue Act of 1951, stated that the Committee had added a new exclusion from gross income to the House Bill, the provision being entitled "Death Benefits to Employees". The Report explained this new provision as follows:

> "Section 22(b)(1) of the Code excludes from gross income amounts received under a life insur-

ance contract paid by reason of the death of the insured, whether in a single sum or otherwise. However, by its terms, this provision is limited to life-insurance payments, and the exclusion does not extend to death benefits paid by an employer by reason of the death of an employee. In order to correct this hardship, section 302 of your committee's bill excludes from gross income death benefits not in excess of $5,000 paid by any one employer with respect to any single employee's beneficiary or beneficiaries *in accordance with a preexisting contract.* The limitation of the exclusion to payments not in excess of $5,000 will prevent abuses under this new provision. (Italics supplied)

"This provision is effective with respect to taxable years beginning after December 31, 1950." S. Rept. No. 781, page 50 (82d Cong. 1st Sess.)

Accordingly, Section 302 of the Revenue Act of 1951, approved October 20, 1951 (65 Stat. 452), amended Section 22(b)(1) of IRC 1939, applicable with respect to taxable years *beginning after December 31, 1950,* to add a new and specific exemption from taxation for amounts not exceeding $5,000 received by beneficiaries of deceased employees, namely, Section 22(b)(1)(B), the pertinent portion of which is quoted as follows:

"* * * Amounts received—* * * (B) *under a contract of an employer* providing for the payment of such amounts to the beneficiaries of an employee, paid by reason of the death of the employee; * * *" (Italics supplied)

On October 9, 1952, in another case like the instant case, the Tax Court held the payment to the widow was a gift exempt from tax. *Alice M. Macfarlane*, 19 T.C. 9. In the early part of 1953, the Commissioner of Internal Revenue "acquiesced" in this decision.

but with the notation that his acquiescence was "not applicable to payments received *after December 31, 1950.*" (1953-1, C.B. 5)

On June 17, 1953, T.D. 6020 (C.B. 1953-2, 106), which amended Regs. 111 to conform to Section 302 of the Revenue Act of 1951, contained an interpretation of the hereinabove quoted language of Section 22(b)(1)(B); namely, it interpreted the language to confer the exemption upon—

> "Amounts, not in excess of $5,000, paid by an employer in pursuance of an *express* contract, to the estate or to a beneficiary * * * of an employee * * *." (Id. 107) (Italics supplied)

The Regulation further provided that

> "An *express* contract * * * shall be deemed to exist only if (1) the *employer and employee had entered into a written contract, not revoked before the employee's death*, which required such payment, or (2) *the employer had an established plan* (or program having the effect of a plan) making provision for such payments in the case of his employees generally or for a class or classes of his employees. In the latter case, * * * *provided such plan had been communicated to such employees.* * * *" (Italics supplied)

The House Ways & Means Committee Report dated March 9, 1954, to accompany H.R. 8300, the Bill to enact the IRC of 1954, calling attention to various restrictive interpretations of Section 22(b)(1)(B) of IRC 1939, as amended, proposed certain changes in the law, and as to one particular change made an explanatory statement, the pertinent portions of which are quoted as follows:

"Present law provides a special exclusion of up to $5,000 for payments by an employer to beneficiaries of a deceased employee. Under existing law, however, *this* exclusion is available only where the employer is under a contractual obligation to pay the death benefits. * * *

"Restricting the exemption to benefits paid under a contract discriminates against those who receive benefits where this contractual obligation does not exist. To avoid this problem your committee's bill extends this exclusion to death benefits whether or not paid under a contract. * * *" (H. Rept. No. 1337, page 14 (83d Cong., 2d Sess.)

The Senate Finance Committee Report dated June 18, 1954, adopted this House provision emphasizing that,—

"The exclusion is also made available regardless of whether the employer has a contractual obligation to pay the death benefits." (Id. 14)

IRC 1954 (68 A Stat. 12) reenacted the relevant language of the statute involved in the instant case, quoted at page 2, *ante*, without substantial change, as follows:

"Sec. 61. GROSS INCOME DEFINED.

"(a) *General Definition.*—* * * gross income means all income from whatever source derived, including * * *:

"(1) Compensation for services * * *

"Sec. 102. GIFTS * * *

"(a) *General Rule.*—Gross income does not include the value of property acquired by gift. * * *"

At the same time, IRC 1954 changed the pertinent portion of the IRC 1939 exemption of *contract* payments to beneficiaries of an employee not exceeding $5,000, to read as follows:

"Sec. 101. CERTAIN DEATH BENEFITS.

* * * * *

"(b) Employees' Death Benefits.—

"(1) General Rule.—Gross income does not include amounts received (whether in a single sum or otherwise) by the beneficiaries or the estate of an employee, if such amounts are paid by or on behalf of an employer and are paid by reason of the death of the employee."

Perhaps the most significant event occurred in 1955, when the Revenue Service ruled (Rev. Rul. 55-609, C.B. 1955-2, 34) in effect (and *without any indication of approval by the Secretary of the Treasury*) that it would not follow I.T. 4027 (*which had been approved by the Acting Secretary of the Treasury* and which stated that the Revenue Service would not "follow" T.D. 2090, *supra*). In effect, Rev. Rul. 55-609 "*follows*" T.D. 2090. In effect, it granted an exception from I.T. 4027, *supra*, for death gratuitous payments specifically authorized by Congress by the Third Supplemental Appropriation Act of 1952 *or any other Act or at any time made out of the contingent fund of the House of Representatives or of the Senate*,—the Revenue Service ruled that any *such* payments are gifts, excludible from gross income of the recipient thereof for federal income tax purposes, and are not includible in the gross estate of the decedent for federal estate tax purposes! Death gratuitous payments to widows by *other* employers, however, appear to continue to be subject to assessment of tax and enforce-

ment of collection by court order—in the latter part of 1957, the Commissioner withdrew his acquiescence in the Tax Court decision in *L. K. Aprill, supra,* and substituted his "non-acquiescence"! (1957-2, C.B. 8-9). And, in Technical Information Release No. 87 published August 25, 1958, the Revenue Service implied that it will continue to litigate under IRC 1939, cases of payments made to widows "pursuant to a plan" of the employer in effect before the husband's death, regardless that the employer had no legal liability to make the payment to the widow.

The foregoing events during the period 1949 to 1958 present even more compelling reasons for grant of the writ than appeared in the *Haynes* case, *supra.* The Internal Revenue Code of 1954, with due notice to taxpayers, had already openly and directly settled the law in the respect questioned in the *Haynes* case. In the instant case, IRC 1954 did not settle the law in the respect questioned herein.

3. The judgment of the Court below is unjust. The decision stands alone in conflict with the decisions above referred to on pages 4-5, *ante,* all of which decisions are believed to be correct. The decision of the Court below is predicated on the rule of the decision of this Court in *Bogardus* v. *Commissioner,* 302 U.S. 34, 43, that intention of the payor governs decision whether the payment received is a gift or compensation to the recipient; and the *dictum* in the decision of this Court in *Old Colony Trust* v. *Commissioner,* 279 U.S. 716, 730, to the effect that legal obligation of the payor to make the payment is not necessary to characterize the payment as compensation to the recipient. The facts of these two

cases, however, differ in a vital respect from the facts of the instant case. In those cases, the recipients of the payments were individuals who had performed the services as employees. In the instant case, the recipient widow, petitioner, never was an employee, never performed any services and never gave any other legal consideration for the payment. Petitioner's husband was an employee and during his lifetime rendered the only services to which the payment in question could in any way be related; however, at the time of his death his services were compensated in full,—the monthly installments of salary for 1950 had been paid directly to him; his salary for January, 1951 (he died on the 16th day) was paid to his estate. His employer was not legally obligated to pay him or his estate any further salary or other additional compensation for his services; and when the employer made the payment in question to his widow, he, of course, was dead,—he was beyond the reach of even a gratuitous payment to him or to a beneficiary designated by him, as additional compensation for his past services. The payment in question was not income to him or to his estate and was not includible in his gross estate for federal estate tax purposes, since neither he nor his estate ever had a legal right to receive or other property interest in the amount of the payment. Cf. Rev. Rul. 55-609, *supra* (page 16, *ante*). Such being the case, it is wholly erroneous, as a matter of fact and of law to speak of the payment as being "compensation for services". Petitioner performed *no* services and gave no other consideration to which the payment could possibly be related for purposes of justifying the levy upon *her* rather than upon her husband or his estate, of the *drastic* federal income tax *imposed upon her—not* imposed upon her husband or his estate!

The language "compensation for personal service", as used in Section 22(a), cannot reasonably be construed to require inclusion of the payment in question in petitioner's gross income.

WHEREFORE, petitioner prays that a writ of certiorari issue to review the decision of the Court of Appeals for the Seventh Circuit.

Respectfully,

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